1953-54

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON BANKING AND COMMERCE

To whom was referred the Bill (467 from the House of Commons), intituled: "An Act to amend the Income Tax Act".

The Honourable SALTER A. HAYDEN, Chairman

TUESDAY, JUNE 15, 1954
WEDNESDAY, JUNE 16, 1954

WITNESSES:

The Honourable D. C. Abbott, P.C., Minister of Finance; Mr. Charles Gavsie, Deputy Minister, Department of National Revenue.

APPENDIX "A"

REPORT OF THE COMMITTEE

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1954.

BANKING AND COMMERCE

The Honourable Salter A. Hayden, Chairman

The Honourable Senators

Aseltine
Baird
Beaubien
Beauregard
Bouffard
Buchanan
Burchill
Campbell
Crerar
Davies
Dessureault
Emmerson
Euler
Fallis
Farris
Gershaw
Gouin
*Haig
Hardy
Hawkins
Hayden
Horner
Howard
Howden
Hugessen
King
Kinley
Lambert
*Macdonald
MacKinnon
McDonald
McGuire
McIntyre
McKeen
McLean
Nicol
Paterson
Pirie
Pratt
Quinn
Reid
Roebuck
Taylor
Vaillancourt
Vien
Wilson
Wood
Woodrow

* *ex officio member.*

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Tuesday, June 15, 1954.

"Pursuant to the Order of the Day, the Honourable Senator Hayden moved that the Bill (467), intituled: 'An Act to amend the Income Tax Act', be now read a second time.

After debate, and—

The question being put on the said motion,

It was resolved in the affirmative.

The said Bill was then read the second time, and—

Referred to the Standing Committee on Banking and Commerce."

L. C. MOYER,
Clerk of the Senate.

TUESDAY, June 15, 1954.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 8.00 P.M.

Present: The Honourable Senators:—Hayden, Chairman, Aseltine, Bouffard, Burchill, Crerar, Euler, Gershaw, Haig, Hardy, Hawkins, Horner, Howard, Hugessen, Kinley, McLean, Quinn, Reid and Woodrow.—18.

In attendance: Mr. John F. MacNeill, Q.C., Law Clerk and Parliamentary Counsel, the Senate, and the Official Reporters of the Senate.

Bill 467, An Act to amend the Income Tax Act, was read and considered clause by clause.

Mr. Charles Gavsie, Deputy Minister, Department of National Revenue, was heard in explanation of the Bill.

On motion of the Honourable Senator Howard, it was RESOLVED to report as follows:—"Your Committee recommend that they be authorized to print 500 copies in English and 200 copies in French of its proceedings on the said Bill, and that Rule 100 be suspended in relation to the said printing."

It was moved that the Bill be amended as follows:—

1. *Page 1, line 4*: strike out the words "Subsection (1) of".
2. *Page 2, line 39*: after the word "amount" insert the word "actually".
3. *Page 11, lines 24 and 25*: delete lines 24 and 25 and substitute therefor the following:

(3) The said section 68A (except paragraph (*a*) and (*b*) thereof in the case of a mutual insurance corporation) is applicable in the case of a resident corporation.

The question being put on the said motion it was declared carried in the affirmative.

The Honourable D. C. Abbott, P.C., Minister of Finance, was heard with respect to clause 15 of the Bill.

At 10.30 p.m. the Committee adjourned until tomorrow, Wednesday, June 16, 1954, at 11 a.m.

A. FORTIER,
Clerk of the Committee.

Attest.

93028—1½

WEDNESDAY, June 16, 1954.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.00 a.m.

Present: The Honourable Senators:—Hayden, Chairman, Aseltine, Beauregard, Bouffard, Burchill, Crerar, Euler, Gershaw, Haig, Hardy, Hawkins, Horner, Howard, Hugessen, Kinley, Lambert, Reid, Taylor, Vaillancourt, and Vien.—21.

In attendance: Mr. John F. MacNeill, Q.C., Law Clerk and Parliamentary Counsel, the Senate, and the Official Reporters of the Senate.

Bill 467, An Act to amend the Income Tax Act, was further considered.

Mr. Charles Gavsie, Deputy Minister, Department of National Revenue, was heard in further explanation of clause 15.

It was moved that clause 15 of the Bill be amended as follows:—

Page 18, lines 13 to 16 both inclusive: delete subclause (2) of clause 26 and substitute therefor the following:

"(2) This section is applicable

(*a*) to any acquisition of shares on or after May 31, 1954, and

(*b*) to any redemption of shares on or after July 31, 1954, other than an acquisition or redemption

(*c*) where the shares were issued on or before February 19, 1953, and

(*d*) where the maximum amount payable by the corporation in respect of the redemption or acquisition of the shares was fixed, by or in accordance with the law under which the corporation was incorporated, on or before February 19, 1953, and has not been increased since that day."

The question being put on the said motion it was declared carried in the affirmative.

It was RESOLVED to report the Bill as amended.

At 11.45 a.m. the Committee adjourned to the call of the Chairman.

Attest.

A. FORTIER,
Clerk of the Committee.

MINUTES OF EVIDENCE

THE SENATE,

OTTAWA, Tuesday, June 15, 1954.

The Standing Committee on Banking and Commerce, to whom was referred Bill 467, an Act to amend the Income Tax Act, met this day at 8 p.m.

Hon. Mr. Hayden in the Chair.

There was present,—Mr. C. Gavsie, Deputy Minister (Taxation), Taxation Division, Department of National Revenue.

The CHAIRMAN: We have a quorum, gentlemen. Bill 467.

Hon. Mr. HAIG: Mr. Chairman, I have a suggestion to make which, I think, will facilitate the inquiry and save some time. Mr. Gavsie, the chairmain has gone over this bill very fully and carefully, section by section, and we liked his explanation, but there are some of the sections we want to ask about, and I am suggesting that we ask about those first, Mr. Chairman, and if anybody wants to ask about any other questions he can ask Mr. Gavsie, instead of our going over every one. You covered it very fully, Mr. Chairman.

The CHAIRMAN: Yes, but remember, with respect to the explanations which I gave, you have only my assurance. With respect to any explanation Mr. Gavsie gives you have, of course, got a professional assurance.

Hon. Mr. HAIG: We are prepared to take a chance on that. . . .

Hon. Mr. BOUFFARD: I think if we go along section by section it will be very much easier.

On section 1—Insurance proceeds expended.

The CHAIRMAN: First, deal with section 1, Mr. Gavsie. Very briefly, the purpose of that is what?

Mr. GAVSIE: Well, under section 20, in the definition of "proceeds of disposition in relation to insurance" there is excluded from the proceeds of disposition an amount equivalent to the amount expended for repairs. The cost of the repairs is allowed as an expense; and the purpose of this section is to include in "income" the proceeds of the insurance policy to the extent that the repairs are made. So that on one side you would have as income the proceeds of the insurance to the extent of the repairs, and on the other side you would have the expenditure as an expense. So that the two would balance themselves.

Hon. Mr. BOUFFARD: The whole policy will be taxable, less the amount spent in the year for repairs?

Mr. GAVSIE: It would not necessarily be taxable, senator. It would be included in the proceeds of disposition to be applied against the capital cost, because in respect to the extent that it was used for repairs in each case, it would be income and the cost of the repairs would be an expense.

The CHAIRMAN: There might or might not be a recapture, depending on the situation.

Hon. Mr. HAIG: I think very seldom that happens, I mean in the smaller cases, because I know where there is a fire and it burns out a window or a door or something like that, generally I find the insurance people say "We will put it in" and they put it in. We don't get any money at all.

Mr. GAVSIE: Then the insurance company in effect is not paying you the insurance policy, they are replacing the article that was damaged or lost.

The CHAIRMAN: Are you satisfied?

Hon. SENATORS: Yes.

The CHAIRMAN: Section 1 is a section we will have to amend, because there is no section 1 of section 6. So an amendment is in order "to strike out the words 'subsection (1) of'" in line 4 on page 1.

Hon. Mr. HAIG: I so move. The draftsman in the government service can make a mistake?

The CHAIRMAN: It would appear so. But Mr. Gavsie has no responsibility for that.

Hon. Mr. HAIG: I know that.

Amendment agreed to.

Section as amended agreed to.

On section 2—Compound interest.

The CHAIRMAN: There are a whole series of amendments dealing with various items of deduction. Is not that right, Mr. Gavsie?

Mr. GAVSIE: Yes.

The CHAIRMAN: Would you just explain them, briefly.

Mr. GAVSIE: The first item relates to interest on borrowed money. Interest on borrowed money used for the purpose of earning income from a business or property is a deductible expense. However, borrowed money used to acquire exempt property, such as shares, by a corporation—in other words, Corporation "A" buys the shares of Corporation "B", then the dividends coming from Corporation "B" to Corporation "A", assuming them both to be domestic companies, would not be taxable. In other words, those dividends would be exempt income. The purpose of this amendment is to make it clear that the interest on the borrowed money used to acquire that exempt property is not a deductible expense.

The CHAIRMAN: Tell me: in the change that has been made the explanatory note says, "for clarification". There is no change of practice?

Mr. GAVSIE: There is a case before the Income Tax Appeal Board where the company argued that, while it was true they were acquiring the shares, the reason behind the acquisition of the shares was that they would enlarge their business. Now, the amendment is to make it clear that the borrowed money which was used to acquire the shares, that is the interest on that borrowed money, is not allowable expense, because the dividends from the shares would not be taxable.

The CHAIRMAN: That would apply so long as that situation existed? Is that right?

Mr. GAVSIE: Yes.

Hon. Mr. CONNOLLY: Even if control of the said company were acquired?

Mr. GAVSIE: Well, whether or not the control was acquired would not affect it. The dividends on the shares coming from "B" to "A" would not be taxable.

The CHAIRMAN: So long as that situation exists interest is not a deductible item?

Mr. GAVSIE: No, sir.

The next item permits the deduction; that is, the paragraph (*ca*), at the bottom of the page. The purpose of that amendment is to allow for the deduction of interest paid on overdue interest. Heretofore only the interest

itself was allowed, and if that interest was in default, and therefore interest was payable on the default interest, that was not allowable. This is widening it out to allow the interest on the default interest as an expense, when it is actually paid.

Hon. Mr. REID: May I ask if meals are counted in this income tax, if the man is away from home?

The CHAIRMAN: We will come to that in a couple of jumps from here, right in this section.

Hon. Mr. ASELTINE: Would that apply to a man whose taxes were in arrears, and at the end of the year a 5 per cent penalty is added?

Mr. GAVSIE: No, that would not be deductible. This only applies to interest on default interest where the original interest itself would be a deductible expense.

Hon. Mr. ASELTINE: I know, but the same principle would not apply to taxes?

Mr. GAVSIE: No.

Hon. Mr. ASELTINE: We have been charging it up, anyway.

The CHAIRMAN: Maybe it is a different principle. Certainly this section does not affect it.

Hon. Mr. ASELTINE: No, this section does not cover it, I know.

Hon. Mr. BOUFFARD: It is interest on interest.

Mr. GAVSIE: At the top of page 2, the change there is exactly similar to the change I have referred to as the first item in section 2.

The CHAIRMAN: Subsection (4)?

Mr. GAVSIE: That amendment provides for a deduction in respect of employees' pension plans, and the maximum amount deductible in each year is raised from $900 to $1,500.

Hon. Mr. REID: What was the thought behind raising it from $900 to $1,500?

The CHAIRMAN: I suppose, today's living conditions and costs as compared with the earlier periods.

Mr. GAVSIE: The Minister of Finance in the House of Commons said, having regard to the fact that $900 was fixed some six or seven years ago, if not longer, he thought, having regard to today's conditions, that $1,500 would be a reasonable amount.

Hon. Mr. CONNOLLY: This question really is not related to this, but perhaps it is introduced by it. It is a matter of policy and you may not want to say very much, but there still has been nothing done about self-employed people getting a tax deduction in relation to retirement provisions, as has been done in the case of companies here.

Mr. GAVSIE: No, there is nothing in the Income Tax Act that deals with that.

Hon. Mr. CONNOLLY: What is the reason? Is it just that a formula cannot be devised?

The CHAIRMAN: That is a policy question, of course.

Mr. GAVSIE: I do not think I would like to get into that question. I think it is a matter of high policy which I would rather leave to the Minister of Finance. I should say, Senator Connolly, that there have been representations to the Minister of Finance on that subject. I think he has spoken about the matter many times. He did last year and again this year in the House of Commons, and I do not like to paraphrase him.

Hon. Mr. CONNOLLY: Perhaps you could answer this. If some formula were devised is it conceivable that there would be much of a loss in revenue?

Mr. GAVSIE: I do not think I should like to answer that.

Hon. Mr. HAIG: It would depend on the formula.

Mr. GAVSIE: And to the extent people took advantage of it.

Hon. Mr. CONNOLLY: You have had some experience with companies.

Mr. GAVSIE: All I can say is it comes to a substantial amount in respect to the employees pension plans.

Hon. Mr. EULER: While, of course, you do not make policy I suppose that when you see something in the act which is not working out perhaps as it should you occasionally make suggestions to the Minister, and that is how some policy might develop?

Mr. GAVSIE: Certainly. We are charged with the administration of the act, and if things do not work—

Hon. Mr. EULER: Or if there seems to be an apparent injustice, shall we say?

Mr. GAVSIE: As between one taxpayer and another—

The CHAIRMAN: One group and another?

Mr. GAVSIE: No, I think it would be regarded as outside our pale to suggest that because one group of taxpayers is receiving a certain allowance that somebody else should. However, I have said perhaps more than I should have on the subject.

Hon. Mr. CONNOLLY: We did not want to embarrass you. The Canadian Bar Association has brought that up many times.

Mr. GAVSIE: Yes, there have been representations for the past several years with respect to that matter.

The CHAIRMAN: Then we come to subsection (6), Mr. Gavsie.

Mr. GAVSIE: This subsection provides for the calculation of the deduction in respect of interest on securities issued at a discount. It provides that you have regard to the face value of the securities. Heretofore the interest was only allowed in respect to the amount actually received by the corporation rather than the amount that they had to repay.

Hon. Mr. BOUFFARD: That takes care of a discount?

Mr. GAVSIE: Yes.

The CHAIRMAN: There is an amendment to clause 2 which the department is proposing. It reads as follows:

> "That clause 2 be amended by inserting the word 'actually' after the word 'amount' in line 39 on page 2 of the bill."

Mr. GAVSIE: The purpose of that amendment is to make the reading clear.

The CHAIRMAN: I am not sure it adds anything to the interpretation that was not intended before, but it makes it abundantly clear. Does the committee approve of that amendment?

Some Hon. SENATORS: Agreed.

The amendment was agreed to.

Hon. Mr. ASELTINE: It is either borrowed or not borrowed. Why put the word "actually" in there?

Mr. GAVSIE: If you look at paragraph (a), for the purposes of allowing the deduction, it provides that the larger amount shall be deemed to be the amount borrowed. And then paragraph (b) deals with the proportioning of the amount, and therefore having deemed the amount to be borrowed the larger amount, when you come to paragraph (b) it would be clearer to put the word "actually" in to distinguish it from the deemed to be amount in paragraph (a).

The CHAIRMAN: Then we come to subparagraph (3b), which is part of subsection (6).

Mr. GAVSIE: Subparagraph (3b) is to clear up a point that has been raised, I think, in a tax appeal board case. An example of it would be where a company borrows money from the bank and uses it to buy shares, and immediately after raises money by way of securities, issuing securities, such as bonds. The Appeal Board took a very narrow view of the situation and said that the money borrowed by way of bonds to pay for the bank loan was not used to buy, let us say, shares.

Hon. Mr. BOUFFARD: And they did not allow the deduction of the interest?

The CHAIRMAN: They did allow.

Mr. GAVSIE: They did allow, and that would be a very simple way to get around the provision which said that the interest on money used to buy shares is not taxable. It would be a very simple thing to borrow the money from the bank today and to repay the bank tomorrow by borrowing by way of bonds. Now, this is to make it clear that the money borrowed to replace the money that was borrowed from the bank shall be deemed to have been used for the same purpose that the borrowing from the bank was used for.

The CHAIRMAN: Then we come to the top of page 3. So much has been said about subparagraph (3c) on the top of page 3 that I do not know whether there is anything more left to be said.

Mr. GAVSIE: Representations were made that it was getting difficult to get teachers, and that resort had to be made to married women who were former teachers; and that in order to do that they ought to be allowed to restore their pension that presumably they had previously taken out before retiring to get married. The purpose of this amendment is to grant relief in that respect so that you have a teacher having gotten married and who wishes to be a teacher now can come back and restore her pension rights by making the payments in respect to the pension.

Hon. Mr. BOUFFARD: And that will be deductible?

The CHAIRMAN: Oh, yes. Then we come to subsection (7). When you raise the amount of the annual contribution to $1,500 on these pension plan contributions, you just say "That is it". If you make a payment in excess in one year you cannot carry it forward to another year.

Mr. GAVSIE: Well, the purpose of this section provides that you can, but the necessity for this amendment arises from the fact that the old section had the amount of $900 mentioned, and having regard to the fact that the amount has been increased from $900 to $1,500 it was necessary to eliminate the reference to $900 in this subsection.

The CHAIRMAN: Oh, yes, it eliminates the reference to $900, but the new limit is $1,500.

Mr. GAVSIE: That is right. That is the limit in respect of one year. Take the case of a temporary civil servant who becomes permanent who has made payments in respect of the period he was on a temporary basis, in other words, what is colloquially called picking-up past service. He might pay $4,000 against the arrears. Under this section, as it read before, he was allowed to deduct up to $900 a year in respect of the $4,000 payment that had been made. Now, with the change in the section mentioned previously, increasing the amount from $900 to $1,500, it was necessary to amend this section by removing the reference to $900, and it now will be governed by the $1,500 mentioned in the previous section.

Hon. Mr. HAWKINS: What about the $4,000, is that deductible?

Mr. GAVSIE: At the rate of $1,500 a year.

Hon. Mr. BOUFFARD: For how many years past?

Mr. GAVSIE: Whatever number of years he was temporary, and what under the plan he can pick up as past service. There are rules under the plan as to how much and how far back you can go.

The CHAIRMAN: That is subparagraph 8, which adds a section that was omitted.

Mr. GAVSIE: Yes, that refers to (vi) which was omitted in the previous section:

> The amendment makes it clear that a clergyman who receives an allowance for transportation which is excluded from income by reason of section 11 of the act for travelling expenses.

In other words, it is not taken into income, so he cannot get a deduction twice.

The CHAIRMAN: Subsection (9) deals with the meals that Senator Reid was asking about. Would you like to deal with that now, Mr. Gavsie?

Mr. GAVSIE: Well, a person who is an employee on a salary or fees, that is, an employee of another person, such as, a driver or a person who has to work in more than one place, may, if he is required by the terms of his employment to pay his own expenses, deduct his expenses in accordance with the specific provisions of the act. Now, some cases came up, and I think the milkman was the main example, because he is paid commissions, and is an employee of the dairy. He claimed he was entitled to deduct his noon time meal. That was felt to be unfair having regard to the fact that many employees take their lunch down town or away from their homes and are not entitled to make a deduction. The purpose of this amendment is to provide that the deduction cannot be made unless they are away from the municipality or the metropolitan area where the employer's establishment is located, for at least twelve hours.

Hon. Mr. BOUFFARD: He has to be away for twelve hours.

Mr. GAVSIE: Yes.

Hon. Mr. HAIG: What about a hotel staff? They get their lunch and supper at the hotel, but they don't always take their supper, but that is charged as income, is it not?

Mr. GAVSIE: Where the employer provides benefits, such as board and lodgings, or board, the act specifically requires that that be taken into income.

Hon. Mr. HAIG: I know that, but where an employee of a hotel does not need to take the supper or bed, but she lives at home, and the salary provides so much money, plus bedroom and meals, in a case like that, she only takes one meal, the noon meal.

Mr. GAVSIE: She will only be charged in respect of that.

The CHAIRMAN: Only what she takes.

Hon. Mr. HAIG: Well, they don't do it. At the Chateau Laurier, whether they take their meals or not, the girls pay for three meals, and bed five nights in a week. I know that. That is added to their salaries, and they don't use it.

Hon. Mr. REID: The unions of British Columbia have a rule that if they are away from home it is a "must" to buy meals, and it is not counted as income at all. In the fisheries industry, if you send men out in the field, you feed them. That is the law.

Mr. GAVSIE: That is a different case. If your employee is working for you in Ottawa here and you send him on your business to Toronto and you reimburse him for the expenses, then that is not income. He is then travelling on his employer's business, and his employer has instructed him to go on his business and has agreed to reimburse him for the cost of his expenses while he is travelling on his employer's business. That is part of his duties, to go to the different places that the employer sends him for the employer's business.

The CHAIRMAN: That is not the case that Senator Haig brought up.

Mr. GAVSIE: No. Well, section 5 of the act, senator, says:

> Income for a taxation year, from an office or employment is the salary, wages and other remuneration, including gratuities, received by the taxpayer in the year plus (a) the value of the board, lodging and other benefits . . .

Hon. Mr. HAIG: Well, the act provides, you see, that the girls receive so much a month plus accommodation for five nights, plus fifteen meals. As a matter of fact, the ones I speak about don't live at home, they come in in the morning and get a noonday meal, and that is all they get, and they go home for supper at night. They tell me that the hotel returns them as getting three meals a day and five nights a week, and that that is income.

The CHAIRMAN: That is a matter of practice, not of law, I would say.

Mr. GAVSIE: It is up to the hotel to correct the situation.

The CHAIRMAN: Now, the last item at the bottom of the page, subsection (10), Mr. Gavsie, simply means that if you are using your automobile in your business and write off capital cost allowances, it is subject to recapture on sale if there is anything there to recapture.

Mr. GAVSIE: Well, that section deals with an employee, such as a salesman. He is entitled to capital cost in respect of the use of his car for business purposes. In other words, there would normally be an apportionment between personal purposes and business purposes. The purpose of the amendment is to make it clear that the recapture provisions are equally applicable to a salesman as they are to a businessman.

Mr. BOUFFARD: If he sells a car at a higher amount than he paid for it?

Mr. GAVSIE: Or if he trades it in he should bring it in; the trade in value of the car would be subject to recapture.

The CHAIRMAN: Section 3 is just correcting an error, so we do not need to spend time on it.

On section 4—Lease-option, hire-purchase, etc.

Mr. GAVSIE: This section of the act, which this amendment relates to, provides that where a lease-option or hire-purchase of agreement is obtained, the lessee is regarded as the purchaser and is entitled to capital cost rather than allowance of rent. The purpose of this amendment is to plug a loophole which we found existed in the law. It was very simple to get around this section by having the lease itself taken by company "A", and having the option in the name of company "B", the related company. You might even have the case of a parent and subsidiary. The purpose of this amendment is to make it clear that section 18 is applicable equally to that type of arrangement.

Hon. Mr. BOUFFARD: It applies to farming?

Mr. GAVSIE: It does not apply to farming.

On Section 5—

This amendment provides new rules for adjusting the depreciation account where a portion of a property is used for production of income has changed. I think Senator Hayden gave an example of that. You might have a duplex and occupy part of it yourself; in those circumstances you would get a capital cost allowance on the part you rented, but you would not get a capital allowance on the part you were using yourself. For some reason or other you want to change that arrangement and rent the part you are occupying. This section provides a rule for arriving at a fair market value

of the part of the duplex which up to this time you had occupied yourself, and are now going to rent; it provides a rule for the determining of the fair market value, and you would then calculate the capital cost allowance.

Hon. Mr. CONNOLLY: What have you done in such circumstances up to now?

Mr. GAVSIE: The rule up to now has been to revalue the entire property.

Hon. Mr. CONNOLLY: This restricts it to one part.

Mr. GAVSIE: Yes. This rule provides in effect that you just value the part of the property, the use of which has been changed.

On Section 6—

The CHAIRMAN: Section 6 simply adds "an iron lung" to the medical expense section.

Mr. GAVSIE: Yes; it deals with the cost or rental in respect of an iron lung, which may now be included in medical expenses.

On Section 7—Control.

Section 7 deals with the case where control of a company is acquired by another company. Under section 28 of the act, the surplus of the acquired company is deemed to be a designated surplus; that is, the surplus up to the end of the year preceding the year in which control was acquired. That is a designated surplus, and cannot be paid out, without running into some tax problems. The amendment deals with the question of dividends that are paid out in the year in which control is acquired, but after the date control was acquired. The amendment has the effect of allowing those dividends to go tax free, provided that the company has sufficient earnings for the whole year equal to those dividends. In other words, you may have a company, the control of which was acquired, we will say, on May 15; its fiscal period is the calendar year; the dividends are declared in June. The purpose of the amendment is to make clear that the dividends declared in June are not caught by the block, and therefore not part of the designated surplus, provided the company has sufficient earnings in the year ending in December, after the control was acquired, to cover those dividends. It is a relieving section.

Hon. Mr. HAWKINS: In other words, they cannot pay out their surplus in dividends.

Mr. GAVSIE: Only to the extent that they have earnings in that year or any subsequent year.

Hon. Mr. HUGESSEN: Will this amendment get around that unfortunate wording, "a completed tax year"?

Mr. GAVSIE: Yes.

Hon. Mr. HUGESSEN: And the trouble people ran into when they tried to pay dividends during the balance of that year.

Mr. GAVSIE: Yes.

Hon. Mr. HOWARD: I observe that on the page opposite section 6 it says "this amendment adds the underlined words". But there are no underlined words in section 6.

The CHAIRMAN: The underlined words are "or in respect of" and "an iron lung". I am told they have not been underlined in the third reading copy.

On section 8—Where income from business or partnership and employment.

Mr. GAVSIE: This is relieving in the case of a partner retiring from a partnership and going into employment. At the moment it is conceivable that such a person may have more than one year's income from the partnership included in the calendar year. In other words, if the fiscal year of the partnership ends in January, (we will say), and the man retires from the partnership

in June, before this amendment he would have to pay tax on his income from employment from June to the end of the year, on his income from the partnership for the whole year ending January, and on his income from the partnership for the period from January to June.

Hon. Mr. CONNOLLY: I am sorry, but I did not follow that explanation.

Mr. GAVSIE: If you follow the dates you will understand it. The fiscal period of the partnership was the end of January; the partner retired from the partnership at the end of June, started to work on the 1st of July and worked through to December. Before this amendment he would have had to pay taxes on his earnings from his salary from June to December, on the income from the partnership for the whole year, and also on the income from the partnership from the end of January to June.

Mr. CHAIRMAN: In other words, he is stuck for a lot more than twelve months income. The idea here is to establish a rate related to the twelve months and not to the actual number of months.

Mr. GAVSIE: That is right.

Hon. Mr. CONNOLLY: What will you do under the amendment?

Mr. GAVSIE: You arrive at a rate of tax by taking the aggregate of the number of days and taking 365 of that aggregate. Let us assume that in the case here there are 550 days, then you take 365/550ths of the total.

Hon. Mr. CONNOLLY: You do not have any reference to a previous year's earnings?

Mr. GAVSIE: No. Then you arrive at an effective rate by applying the formula, and apply that effective rate to the cases.

The section was agreed to.

On Section 9—

The CHAIRMAN: Section 9 is simply changing the language from "related" to "associated"?

Mr. GAVSIE: Yes, the first part deals with the change of language, and, then, the paragraph headed number 6?

The CHAIRMAN: Yes.

Mr. GAVSIE: That deals with the case where Company A and Company B control Company C. Company A and Company B are controlled by Mr. X. The amendment provides that those three companies are related companies, having regard to the fact that Company A and Company B are controlled by Mr. X, and therefore Company C, which is controlled by Company A and Company B are controlled by Mr. X, which makes the three companies related.

Hon. Mr. HUGESSEN: Is that to get around the Army and Navy case?

Mr. GAVSIE: That is the Army and Navy case, yes, Senator.

The section was agreed to.

On Section 10—

The CHAIRMAN: Section 10 deals with the averaging of income from farming or fishing activities.

Hon. Mr. ASELTINE: I think, Mr. Chairman, you gave a full explanation of that.

The CHAIRMAN: Yes, I thought I did. I also gave a diagram. Are you satisfied.

Hon. MEMBERS: Yes.

The section was agreed to.

On Section 11—Corporations.

Mr. GAVSIE: Section 11 is a relieving one in connection with corporation instalment payments. At the present time corporations make instalment payments during the last six months of the fiscal year period, based on an estimate. The present law requires the company, in effect, to know its profit at the end of the first month after the close of the fiscal period. Representations were made that that was too short a time.

Hon. Mr. HUGESSEN: You are now extending it?

Mr. GAVSIE: Yes, extending it for instalment estimating purposes to nine months.

The section was agreed to.

On sections 12 and 13—Effect of

Carry Back of Loss.

Mr. GAVSIE: Sections 12 and 13 deal with the same subject matter. Under the law at the present time there is a deduction in calculating this year's income in respect of next year's loss and I think that is a physical or mental impossibility.

The CHAIRMAN: That is really saying something.

Mr. GAVSIE: That has been in the law for quite some time and the only problem it gave rise to is the question of interest. Rather than change that provision in the law we are clearing up the point in respect of interest on instalments and arrears of tax. The rule that is being legislated here is that, in the year where there is profit, that is the year we are talking about, a person will be charged interest on his deficiencies of instalments or arrears of tax and the loss will only be taken into account at the end of the fiscal period in which the loss was incurred. Most people pay their taxes as they go along and as they make profits. Now, in this one case as I say there is a provision that you can deduct next year's loss in making up this year's income and that is mental gymnastics which I think cannot be performed. Rather than change that we provide that the interest will run up to the close of the year of loss.

The section was agreed to.

On Section 14—Farmers' and fishermen's insurers.

The CHAIRMAN: Section 14 is a simple exemption section for fishermen and farmers' insurers where the premium income is 50 per cent more than the income of the company.

Mr. GAVSIE: That gives effect to Budget Resolution number 7.

Hon. Mr. BOUFFARD: That is to clear up the small Mutuals.

Mr. GAVSIE: Yes.

The section was agreed to.

On Section 15—

The CHAIRMAN: This section 15 is the one on which there has been some debate.

Hon. Mr. HAIG: Considerable debate I would say.

The CHAIRMAN: Yes. I used the word 'some' in a large sense.

Hon. Mr. HAIG: Mr. Gavsie, you can answer it very easily. Take any company you like. Take one of the mutual companies in Canada, the Wawanesa Mutual for example. What will they have to pay? They paid in 1947, they paid, I think, in 1948 and 1949 under protest, and they got a refund of their money. Now what do they have to pay for 1953?

Mr. GAVSIE: For 1953 they will pay tax on their investment income.

The CHAIRMAN: Only.

Hon. Mr. HAIG: Only. And in 1954?

Mr. GAVSIE: They will pay tax on their underwriting profits and on their investment income. If their fiscal period is from January 1, 1954, they will pay tax on their underwriting profit and on their investment income for that year.

Hon. Mr. HAIG: Thank you very much. That is all I wanted to know.

Hon. Mr. ASELTINE: What about the retroactive feature of this section?

Mr. GAVSIE: Well, it applies to non-resident corporations.

Hon. Mr. BOUFFARD: Could you give us an example of that? How can it be applied to a non-resident?

The CHAIRMAN: Take a non-resident mutual, Mr. Gavsie, and let us assume they have filed and paid their income tax in accordance with the law as it was written for 1947 on right down to 1953.

Mr. GAVSIE: With this legislation, regardless of the Stanley Mutual case, they will pay tax on their underwriting profit from 1947 forward. From 1953 they will, in addition to paying tax on their underwriting profit, pay the non-resident tax or a portion of the non-resident tax to the extent that their investments in Canada exceed their liabilities in Canada. That is not contained in this legislation, that is contained in the regulations that were set up in part 8 of the regulations, under an Order-in-Council which was passed, I think, in 1953. Part 8 was enacted by Order-in-Council P.C. 1953-153, of February 5, 1953, and is applicable to the 1953 and subsequent taxation years. So coming back to this section, as far as the non-resident insurance company is concerned, they will pay tax on their underwriting profits in Canada since 1947.

Hon. Mr. HAIG: Canadian companies will only pay it for 1954?

Mr. GAVSIE: On their underwriting profits?

Hon. Mr. HAIG: Yes.

Mr. GAVSIE: Unless, and I should qualify that by this remark, that if they paid it and they are too late to get the refund—

Hon. Mr. HAIG: The one I am interested in is the Wawanesa company. They paid it under protest and they got a refund of their money.

Mr. GAVSIE: I imagine they must have filed an appeal to preserve their rights, but the reason I make a qualification is that you come to the question of refunds where you have paid the tax.

Hon. Mr. HAIG: That does not come in here at all.

Mr. GAVSIE: I make that reservation, and having said that, we can disregard it in any further discussion.

Hon. Mr. BOUFFARD: Take the Stanley Company, who went up to the Supreme Court and gained their cause. Evidently they did not pay the department on the underwriting profits since 1947. It means that in 1954, though they have judgment in their favour, they will have to pay the tax on the underwriting profits from 1947.

Mr. GAVSIE: Talking about the Stanley case, I would not like to make a definite statement, but I am informed that they come under the exemption.

The CHAIRMAN: Because the Stanley Company is a mutual company.

Hon. Mr. BOUFFARD: The company has not paid the tax since 1947. You take a non-resident company that has not paid on its underwriting profits since 1947, they would have to go back to 1947 and pay the tax on the underwriting every year.

Mr. GAVSIE: I don't think there are any. There may be the odd one, but I doubt if there are any.

The CHAIRMAN: The thing that bothers me at the moment is, dealing with subsection (3) on page 11, in talking about a resident corporation: a resident corporation may be a stock company and it may be a mutual: is not that right?

Mr. GAVSIE: Yes.

The CHAIRMAN: A resident corporation may be a stock company or a mutual. Now, what subsection (3) says is that with respect to 1953, whether that resident company is a stock company or a mutual, it pays tax on its investment income only, and also with respect to the period in 1947 to 1952 it pays on its investment income only. Now, I do not conceive it was intended that these exemption sections would deal with more than mutuals, and here you are giving an exemption to stock companies on underwriting profits from 1947 to 1953 inclusive, if they are resident companies. Am I reading that right?

Mr. GAVSIE: I don't think that is right. The section starts: "It is hereby declared". I think, when we are dealing with other than mutuals, there is no problem, because the Stanley case only dealt with Mutuals. I don't think this gives any exemption to anybody that is not affected by the Stanley Mutual case, and it only deals, since it is declaratory, with those that would be exempt by reason of the provisions of the present law without this section.

The CHAIRMAN: The declaratory section, adding 68A, declares the law in relation to an insurance company other than life, whether or not it is a mutual corporation. Therefore it covers every kind of corporation, stock or mutual, other than a life corporation, and you declare what their liability is for tax. When you talk about resident and non-resident companies, the words "non-resident" and "resident" would include in each case both mutual and stock; and that has caused me considerable concern.

Mr. GAVSIE: There may be something. Could we just leave that till we go through the other sections?

The CHAIRMAN: Can we stand that clause?

Mr. GAVSIE: I will have an answer before we leave.

The CHAIRMAN: There may be some question of policy in relation to this section, and I do not think it is fair to ask Mr. Gavsie why you deal thus with one and otherwise with something else.

Hon. Mr. CONNOLLY: I do not want to ask an unfair question, but have there been any repercussions since this legislation appeared? In other words, have there been representations made that there is a limit of enforcement in these sections?

Hon. Mr. HAIG: The only representation made was the Mutuals' representation to me.

The CHAIRMAN: Well, there were representations to the Minister, I understand.

Hon. Mr. HAIG: Maybe. I don't know about that. I thought you meant, in our house.

Mr. GAVSIE: I think there were from non-residents.

Hon. Mr. HOWARD: How do you establish the investment income of a foreign company whose head office is, we will say, in New York City, and operating in Canada?

Mr. GAVSIE: We take their Canadian assets, senator.

Hon. Mr. HOWARD: If they don't have any?

Hon. Mr. BOUFFARD: They have got to have.

Mr. GAVSIE: I should go a step further and say, a company not registered to do business in Canada and having investments in Canada, that is the same as any individual or any other company: there is a withholding 15 per cent. I am talking about non-resident companies registered to do business in Canada.

Hon. Mr. HUGESSEN: And having investments in Canada.

Mr. GAVSIE: Having investments in Canada. They are required by the insurance law to have investments in Canada. The non-resident tax is only applicable to these companies to the extent that they have Canadian assets in excess of their Canadian liabilities. It is all set forth in the regulations, senator, and I would not attempt to paraphrase it.

Hon. Mr. HOWARD: What I am getting at is, I think it is unfair to our Canadian companies, but I don't see how you can do anything else.

Hon. Mr. BOUFFARD: One thing I would like to know is, what is the reason, Mr. Chairman, for the difference between a resident company and a non-resident company in the application of the tax.

The CHAIRMAN: I was wondering whether that might be a question of policy, and if so I think the Minister should answer it. Do you feel that way, Mr. Gavsie?

Mr. GAVSIE: Well, I would not want to answer it. I can tell you the factual difference. But if you really ask the reason—

The CHAIRMAN: You want to know the reason, senator; is that it?

Hon. Mr. BOUFFARD: Yes.

Hon. Mr. HAIG: Better ask the Minister.

The CHAIRMAN: Well, I think we should stand this section for the present.

Section stands.

On section 16—

Mr. GAVSIE: This section deals with non-resident owned investment corporations, and excludes a company which might otherwise be a non-resident owned investment corporation, if its principal buisness is trading or dealing in mortgages, bills, notes or similar property or any interest therein.

The CHAIRMAN: It spells out in more detail the kind of business which would disqualify them.

The section was agreed to.

On section 17—Employer's contribution to trust deductible.

Mr. GAVSIE: This section deals with profit-sharing plans. The employer can set up a profit-sharing plan, paying over to trustees, on behalf of the employees, a part of the profit. The first amendment is to allow the employer to make the payment within the taxation year or within sixty days after the close of the taxation year.

Hon. Mr. BOUFFARD: Is that all the change?

Mr. GAVSIE: That is the first change. The second change is to widen the provision and to allow an employer to elect, if he is making payments out of profits, although it is not computed by reference to the profits, to qualify that as a profit-sharing plan within the meaning of the section.

The CHAIRMAN: The language in the present act is to the effect that moneys going into this profit-sharing plan must be computed by reference to profits, and there is a difference between paying out of profits and a reference to profits.

The section was agreed to.

On section 18—Where paid-up capital increased.

Mr. GAVSIE: This deals with the question of undistributed income. This new section provides that where the paid-up capital of the company is increased without an equivalent increases in assets, and if the company has

undistributed income on hand, then it shall be deemed to have capitalized the lesser of the undistributed income on hand or the amount by which the corporations paid-up capital was increased.

Hon. Mr. BOUFFARD: I should like to have a few examples of that. Take, for instance, a company which sells stock to its shareholders at a price which would be, let us say, one to three points below the market price. Does it mean that the purchaser of those shares would have to consider a part of his purchase as dividend?

Mr. GAVSIE: No, the example I will give you is this. First I thought it could not happen under the Companies Act, but I saw it actually happen and therefore we thought we ought to legislate. The company has "X" dollars of undistributed income on hand. The par value of its share is a dollar. It has capital surplus created in one of different ways. It may have made capital profits on transactions or it may have revalued its assets. The company now says "We want to increase the par value of the existing shares from $1 to $10 and we want to use for that purpose our capital surplus." We say that that is contrary to all the rules that we have here relating to undistributed income. Honourable senators will recall two or three years ago when dealing with the tax-paid undistributed income we said that the cardinal rule was that you could not capitalize a capital surplus as long as you had undistributed income on hand. The purpose of this rule is to make it clear that you cannot capitalize your capital surplus by increasing the par value of the shares without adding anything new by way of assets.

Hon. Mr. HOWARD: That is right.

Mr. GAVSIE: What we say you are actually doing is capitalizing your undistributed income.

Hon. Mr. BOUFFARD: The Senate dealt with the Bank Act the other day. The banks may increase their capital by selling stock to their shareholders. Suppose the stock of one bank is selling at $30 and its par value is $10. Let us suppose there is an amount of stock which is not taken. My understanding is that the banks have a right to sell that stock to anybody at $10 a share. Will that be deemed to be a stock dividend?

Mr. GAVSIE: No, because their paid-up capital would only be increased by the par value of the shares.

Hon. Mr. HUGESSEN: You might consider a case of this kind. Suppose a company has a surplus and it has shares of $100 par value on which $50 has been paid. The directors, at some time, might say "We will contribute part of that capital surplus to paying up the remaining $50." So that there is a half-paid share. That is about the only case I can think of.

The CHAIRMAN: If at a time when I have undistributed income I have an appraisal made of my fixed assets and find there is an increase, and then I attempt to capitalize that increase by issuing additional shares, then, in those circumstances, if I have undistributed income—

Hon. Mr. HUGESSEN: That would be stock dividend. You might perhaps try to increase the par value of the existing shares.

The CHAIRMAN: If I increased the par value of those shares I would come within the meaning of this section.

Hon. Mr. HUGESSEN: If you issued additional shares it would be a stock dividend.

Hon. Mr. BOUFFARD: Would it apply if the shares were sold below par or below the par value of the shares?

Th CHAIRMAN: You cannot sell them below par value, not under the Companies Act.

Hon. Mr. BOUFFARD: You can in some cases. If you buy property and pay for it with shares it may be decided that the properties which were sold did not have the value that they were sold for. It means that an enquiry will be held long after.

Mr. GAVSIE: I take it in that case, the property would be put on the books of the company at least at equivalent of the par value of the shares.

Hon. Mr. BOUFFARD: Yes, they would.

The section was agreed to.

On section 19—Computation.

The CHAIRMAN: The purpose of this section is simply to correct some misprints. Is that correct, Mr. Gavsie?

Mr. GAVSIE: Yes.

The CHAIRMAN: In the amendments of last year.

Subsection 3 is substantive, is it not?

Mr. GAVSIE: Yes. This again, deals with rules for computing undistributed income, and relates mainly to oil, gas and mining companies. Reading from the explanatory note, it says:

> It is necessary because during the years 1943 to 1947 these companies were not allowed a deduction for exploration expenses in computing income but instead were given a tax credit equal to various percentages of exploration expenses. Since the exploration expenses were not deducted in computing income the companies in effect received depletion allowances on these expenses. Also because these exploration expenses were not deducted in computing income they may now be deducted in computing undistributed income and in this way they give rise to a double benefit. This amendment requires corporations to add back to undistributed income an amount equal to the extra depletion the corporations were able to claim because the exploration expenses were not deducted.

The CHAIRMAN: The next is subsection 4.

Mr. GAVSIE: Subsection 4, on page 13, and subsection 5 at the top of page 14, deal with the same matter. Last year, I think it was, there was an amendment made to the act which provided that the tax paid undistributed income of a subsidiary could be moved up to the parent as tax paid undistributed income. The purpose of the amendment today is to insert the date.

The CHAIRMAN: The commencement date?

Mr. GAVSIE: The amendment of last year made no reference to the date as of which the dividend received applied, and the purpose of the amendment is to make it apply back to the beginning of the scheme relating to tax paid undistributed income, that is, June 30, 1950, and both the amendments apply in respect of the present act and also in respect of the act preceding the revised statutes.

Hon. Mr. BOUFFARD: And would the parent company be able to distribute that—

Mr. GAVSIE: Then it has tax-paid undistributed income.

Hon. Mr. BOUFFARD: It can make a distribution to a shareholder without tax?

The CHAIRMAN: That is right.

On section 15—Mutual Insurance Corporations.

The CHAIRMAN: May I interrupt our consideration? Mr. Abbott, Minister of Finance, is here.

Mr. Abbott, Senator Bouffard asked a question on section 15. Would you care to ask it now Senator Bouffard?

Hon. Mr. BOUFFARD: Yes, I would like to know the reason the treatment of foreign companies and resident companies is different.

Hon. Mr. ABBOTT: The explanation is this, that for a great many years, going back I think, subject to correction, as far as 1917, as a result of an arrangement made with the foreign mutuals, through Mr. Finlayson, the Superintendent of Insurance, they have been taxed on their underwriting profits but not on their investment income. Now, there has been no apportionment of head office expenses against their Canadian earnings. That is an arrangement that has apparently worked satisfactorily over the years, both to the department of insurance, the income tax department and the foreign non-resident mutuals. When the Stanley Mutual case arose, of course, the non-resident mutuals, as I remember, were not parties to the case—they did not intervene, and the judgment rendered by the Supreme Court held that what I have referred to as the underwriting profits of the resident mutuals—the Stanley Mutual in this case—were not taxable within the meaning of the Income Tax Act. Although it was not necessary for the decision of the case, they did say by way of *obiter dictum* that the investment earnings of these Canadian mutuals would be subject to tax.

The CHAIRMAN: That was admitted by all.

Hon. Mr. ABBOTT: I think that was admitted by all parties concerned. Now, if the holding in the case were applied to the foreign mutuals, the non-resident mutuals, it would mean they would escape taxation entirely in Canada for the period under consideration; and it seemed to me that that was neither intended nor desirable. They had not quarrelled about the basis on which they were taxed for a good many years at any time. I admire the philosophic content of the Supreme Court judgment in the Stanley Mutual case, and it attempted to correct what was the undoubted intention of parliament in 1946.

The CHAIRMAN: You may inadvertently have referred to foreign mutual in respect to taxation going back to 1917. We first started taxing mutuals in 1947. You must have meant the non-resident stock companies?

Hon. Mr. ABBOTT: No, these mutuals were taxed on their underwriting profits ever since we have had an Income Tax Act. Am I right, Mr. Gavsie?

Mr. GAVSIE: I would have to check.

The CHAIRMAN: The Royal Commission in 1945 had as one of the questions to decide whether mutuals were subject to tax on their underwriting profits, and as a result of that we had legislation—

Hon. Mr. ABBOTT: Subject to correction, the basis upon which these companies have been taxed certainly goes back to Finlayson's time, in the period under consideration.

The CHAIRMAN: Yes, 1947.

Hon. Mr. ABBOTT: Yes, it goes back some little time.

Well, that was the situation, and the non-resident mutuals came to see me, and I told them that was the view the government took of the matter, and I said that if any other rule were followed we certainly would have to look at the system under which they were taxed and open the whole thing again and not except their investment income, but to have an apportionment, and so on. They did not want that for what reason I do not know, but probably because this has been a good practical way, although I think they might not pay any more tax in that case, although it might be open to argument, but in any case the real basis for the decision to continue the basis of taxation as it has been ever since they were subject to tax, which you say is 1947, Mr. Chairman, was the basis of the rule here.

The CHAIRMAN: The thing that was bothering me was that since you established a principle implementing the Royal Commission report on taxing mutuals they are reaffirming that principle now, notwithstanding the Stanley decision. Why should we not say that the law of 1947 was intended to apply to all mutuals and that it still applies from that date to all mutuals? Why should we draw a line as between one group and another? Why should we draw a line as between one corporation and another?

Hon. Mr. ABBOTT: Because I have never liked to legislate a litigant out of an action which he has taken.

The CHAIRMAN: Or out of a benefit.

Hon. Mr. ABBOTT: If he wins his case in court, I don't think one should always extend that benefit to another who has not been a party to the case and has not intervened. That is the reason for not taking the benefit away from the Canadian mutuals. They took the matter to court: We took them through the different appeal courts and lost, and we feel they are entitled to the benefit of that period. But the non-resident mutuals did not intervene in the case, they did not take part in it, and therefore it seems to me we can differentiate between the two.

Hon. Mr. HAIG: That is your real reason.

Hon. Mr. ABBOTT: That is my reason.

The CHAIRMAN: There was some regulation passed last year for income purposes under which you get a portion of the mutual investment income.

Hon. Mr. ABBOTT: That applies not only to mutual insurance companies.

The CHAIRMAN: To non-resident companies.

Hon. Mr. ABBOTT: It applies to any non-resident companies, and to life companies as well as the companies which we are considering here. That is a formula which my former deputy, Dr. Clark, worked out and it has been included in the regulations.

The CHAIRMAN: There was one question we asked Mr. Gavsie, and I do not think we have an answer to it. It may be a matter of interpretation, and perhaps we will get your intention. You start off in section 68A by declaring what the law is to be in relation to corporations other than life companies, whether mutual or not.

Hon. Mr. ABBOTT: That is right.

The CHAIRMAN: They are deemed to be taxable on underwriting profits and investment income, and the rules in force shall apply. Then you start dealing with resident and non-resident companies without stating whether mutual or not. I take it that resident companies include stock companies and mutuals. When dealing with resident companies in subsection 3 on page 11, you say this new section which makes underwriting and investment income taxable to resident corporations; but it is only the investment income provision that applies to 1953 and also from 1947 to 1952. In other words, a stock company under this section, as I read it, which has qualified as a resident corporation is exempt from taxation on underwriting profits from 1947 down to and including 1953. I think the intention was to deal only with resident mutuals.

Hon. Mr. ABBOTT: I am unable to answer that question offhand, senator. Perhaps Mr. Gavsie can answer it.

Mr. GAVSIE: This is merely declaratory; and the other provisions of the act would apply to a stock company. Subsection 3, to which you refer, does not give an exemption. It says to the extent that you have declaratory legislation here, it is applicable to resident companies—

The CHAIRMAN: But section 68A is a new section that you are putting into the Income Tax Act; it has the same force and effect as all the other sections.

Mr. GAVSIE: Yes, but my information is that other than mutual companies are taxable under the other sections of the act. It is only this section that is applicable to mutual companies.

The CHAIRMAN: They would be taxable only under the general law of earned income; there is no special provision which says stock companies are taxable.

Mr. GAVSIE: That comes under the general rules of taxing corporations.

Hon. Mr. ABBOTT: The finding in the Stanley Mutual case, as I recall it, was by reason of the nature of the company's operations. They did not earn in their so-called underwriting surplus what was taxable income within the meaning of the general sections of the act.

The CHAIRMAN: That is true; but what I am afraid of here is that we are giving the benefit of exemption to stock companies as well as to domestic mutual companies from 1947 to 1953.

Hon. Mr. ABBOTT: I would be shocked if Mr. Jackett had achieved that result. I would hardly think so; I have found him pretty careful in these things.

Hon. Mr. BOUFFARD: Will the title "mutual insurance corporations" remain in the act?

Mr. GAVSIE: Yes, section 68A will remain in the act.

Hon. Mr. BOUFFARD: And will the title "mutual insurance corporations" remain in the act? They seem to be the only corporations covered by 68A.

The CHAIRMAN: The title is a misnomer, because it declares what is an insurance company, whether a mutual or not.

Hon. Mr. ASELTINE: Why leave it in?

The CHAIRMAN: Do you still want the title in?

Hon. Mr. HUGESSEN: In the light of Mr. Gavsie's explanation, the words "whether or not it is a mutual corporation" in the second and third lines of the section, are applicable.

Hon. Mr. BOUFFARD: It seems to apply to all corporations.

Mr. GAVSIE: It is additional legislation over and above what we have at the present time. The Supreme Court held that the Stanley Mutual company was not a taxable corporation; and the declaration here spells out what would otherwise be income in the case of an ordinary corporation.

The CHAIRMAN: Any corporation.

Hon. Mr. ABBOTT: I think Senator Hayden's point is that Section 68A, which is declaratory, lays down the rule for taxation of insurance corporations, other than life companies.

The CHAIRMAN: Whether mutual or not.

Hon. Mr. ABBOTT: Whether mutual or not. That is your point.

The CHAIRMAN: Yes. I think we are giving more than is intended or more than is necessary to do.

Hon. Mr. BOUFFARD: That would apply to stock companies?

The CHAIRMAN: To stock companies, yes. Certainly, I do not think that was the intention.

Hon. Mr. BOUFFARD: It does not look like it.

The CHAIRMAN: Not in the light of the explanations we have had.

Hon. Mr. ABBOTT: Subsection 3 excludes (c).

The CHAIRMAN: No, it includes only (c).

Hon. Mr. ABBOTT: No, it includes only (c), and does not include the underwriting profits.

The CHAIRMAN: It certainly would be expanding on the generous side, I would think.

Hon. Mr. BOUFFARD: I think if we give up this provision, we would be giving up a good argument on behalf of stock companies.

The CHAIRMAN: Shall we let this section stand?

Hon. Mr. ABBOTT: I think it might be well if we let this section stand, and I will get in touch with Mr. Jackett and Mr. Varcoe, and get an explanation on it.

The CHAIRMAN: In the meantime, we will go ahead with the other sections. That is the only question on policy that has come up, Mr. Abbott, and we thought we would like to have your explanation on it. We will be meeting again tomorrow morning at eleven o'clock.

Hon. Mr. ABBOTT: It is rather complicated drafting, which I cannot explain offhand.

The CHAIRMAN: We will excuse you now, and take up this section tomorrow morning.

Mr. Gavsie, we were at page 14 of the bill, discussing subsection 6. That is the subsection which I described before as "resurrection without reward".

Hon. Mr. HAWKINS: The accumulation of a deficit, if one can accumulate a deficit.

The CHAIRMAN: Yes.

Hon. Mr. HAWKINS: I think that point was well explained.

Hon. Mr. BOUFFARD: What is the reason for that provision, Mr. Gavsie?

Mr. GAVSIE: It has been the practice; as a matter of fact, it has turned out in certain cases that a deficit company was worth more than a profit company.

The CHAIRMAN: I have had people say to me the shares of a company are worth that much more because the company has a deficit. It seems a most extraordinary statement.

On Section 20—

The CHAIRMAN: This is the section dealing with a prospector, is it not?

Mr. GAVSIE: Yes. In the case of a prospector, he does not get the exemption if he carries on a campaign to sell shares in a corporation to the public, and the change now is adding the words "who disposes of the shares of a corporation while or after . . ." Previously it read: "after carrying on a campaign". It seemed more logical to say he was disposing of it while he was carrying on the campaign as well as after.

The CHAIRMAN: I think the committee understands that under the general income tax law when a prospector, who receives shares in connection with a property which he has staked, sells those shares the money he receives from them is not to be included in his income. This amendment is to apply to the case where that exemption does not apply.

On the top of page 15 there is that very beneficial extension of time in connection with mining companies coming into production. They can now come into production up to the end of 1957 and have thirty-six months of exemption.

Mr. GAVSIE: Yes, it carries the exemption with respect to mining companies one year forward.

The section was agreed to.

On section 21—

Mr. GAVSIE: Last year there was an amendment to the act dealing with stock options to employees, and the amendments in section 21 relate to that amendment. The first amendment deals with the case were a person, after he gets an option, ceases to be an employee and the amendment provides that the rules contained in section 85A, which was added last year, continue to apply even though he ceases to be an employee. The second amendment is to make it clear that the section does not apply if the benefits received were not qua employee. In other words, it may be that rights were given to all the shareholders to purchase shares, and in that case the other rules in the law would apply rather than section 85A.

The section was agreed to.

On Section 22—

The CHAIRMAN: Is this what we could call a beneficial section?

Mr. GAVSIE: This is a relieving section. It deals with the question of reserves in respect of containers and milk tickets, etc., added last year. The amendment relates to chattels that are leased over a period of more than two years, and there is prepaid or advance rent paid. This amendment provides for a reserve calculated upon the advance rent. The rent may have been paid for five years, and it provides for a reserve equivalent to the unearned portion of the rent.

The CHAIRMAN: Senator Isnor, you had a question?

Hon. Mr. ISNOR: I asked a question of the Chairman the other day as to whether this particular clause applied to the installation of a sprinkler system, the cost of which would be carried over a period of years and reconciled to the increased rate.

Mr. GAVSIE: Senator, this would not affect that in any way, shape or form. You have reference to an owner of a building installing a sprinkler system?

Hon. Mr. ISNOR: That is right.

Mr. GAVSIE: That would come under the capital cost regulations. This amendment has reference to something different. An example I think that Senator Hayden gave was that the propane gas people delivered gas in containers and they require the user of the gas to pay them advance rent in respect of the container. Let us say there is a rent of X dollars per year for the use of the containers and they want five years' rent in advance and a person pays them that advance rent. The question is how does the propane gas seller treat that advance rent. This section provides that he can have a reserve in respect of all the unearned portion of the rent. The question that Senator Isnor raises is one that is in the law now.

The CHAIRMAN: Except, Mr. Gavsie, following Senator Isnor's thought, if the owner of the sprinkler system rented it—let us assume that he was charged a rental for it, pays on use—rather than a purchase, then the problem would arise from the point of view of the owner whether he could set up a reserve or not.

Hon. Mr. ISNOR: If you wish to put it another way, let us say he agrees to have the sprinkler system installed at a cost of $32,000 to be reimbursed over a period of years with increased rentals and the supplier will pick up the savings made on insurance.

Mr. GAVSIE: Are you thinking of the vendor or the purchaser?

Hon. Mr. ISNOR: I am thinking of it from both angles.

Mr. GAVSIE: As far as the purchaser is concerned, he has undertaken to pay $32,000 for the sprinkler system. As far as the vendor is concerned he made an instalment sale and that would fall under the normal rules of an

instalment sale. This amendment relates to chattels and I would want to know what province we are talking about before I could give an opinion as to whether the sprinkler system could be a chattel or an immovable. I think Senator Hugesson will bear me out that that has been the subject of litigation in the province of Quebec.

Hon. Mr. Hugessen: It is fixed and is part of the immovable.

Mr. Gavsie: Perhaps the little caps protruding from the ceiling might be removable.

Hon. Mr. Isnor: The motor is a very important part of the equipment, as well as the pump.

Mr. Gavsie: However, the amendment we are discussing does not relate to that at all.

The Chairman: Subsection 2. Is there anything we should pay particular attention to here?

Mr. Gavsie: No, it provides that where an individual is in business we have regard to the fiscal period of the business in dealing with the question of reserves rather than the calendar year. In calculating income from a business we take the fiscal period of the business rather than the calendar year.

The section was agreed to.

On Section 23—

The Chairman: I do not think we need to spend any time on that. That is the case of an immigrant who has been here only a couple of months and receives family allowances for a few months, in which event he can secure an exemption of $150 a year in respect of each child. This permits him to pay back a couple of months' family allowance and then he can claim $400 in respect of each child.

Mr. Gavsie: He can elect to take the one that is more beneficial to him.

Hon. Mr. Connolly: That is in relation to family allowances?

Mr. Gavsie: Yes. He adds it to his tax.

The section was agreed to.

On Section 24—

The Chairman: This is a section dealing with a problem that has provoked some interest, the sale of accounts receivable.

Mr. Gavsie: Section 25 provides a rule in the case of sales of businesses which would include accounts receivable, and the rule is, first, that there must be an agreement between the vendor and the purchaser with respect to the amount included for the accounts receivable, and if there is that agreement then the vendor may deduct the difference between the face value of the debts so sold and the consideration paid by the purchaser to the vendor for the debts, and the purchaser would include that difference in his income. In other words, it would operate as if there had not been any sale. The purchaser would have to take into income the amount that the vendor was allowed to deduct from his income.

Hon. Mr. Connolly: How would you treat the case where $100,000 in book value of accounts receivable were sold for $50,000?

Mr. Gavsie: You also must have regard to the fact that the vendor would have a reserve for doubtful debts.

Hon. Mr. Connolly: Yes, but not $50,000.

The Chairman: Let us assume he has a reserve of, say, $10,000.

Mr. Gavsie: They have agreed upon the figure of $50,000 as being the amount paid for the debts. Rule (*a*) is that there may be deducted by the

vendor the difference between the face value of the debts so sold and the consideration paid by the purchaser to the vendor for the debts so sold. So he can deduct $50,000.

The CHAIRMAN: There is an exception, though, Mr. Gavsie. In brackets it says "(other than debts in respect of which the vendor has made deductions under paragraph (f) of subsection (1) of section 11)". That is a deduction for bad debts.

Mr. GAVSIE: That is a deduction for bad debts. That would only complicate it. But I am trying to keep it simple.

Hon. Mr. CONNOLLY: Say $50,000 and $70,000. That may make it a little easier, because you are going to get back to talking about $50,000 too often.

The CHAIRMAN: Say the situation is that they have $100,000 of book debts.

Mr. GAVSIE: And they are all good eventually.

The CHAIRMAN: And they are selling them for $75,000 to a collection agency. It is often done.

Mr. GAVSIE: You have got the first rule. "Where a person who has been carrying on a business has, in a taxation year, sold all or substantially all the property used in carrying on the business, including the debts that have been or will be included in computing his income for that year or a previous year and that are still outstanding, to a purchaser who proposes to continue the business". This does not deal with the case of where you just sell the accounts receivable. It is where you are selling them as part of the business.

Hon. Mr. ASELTINE: The vendor has already paid income tax on these.

Mr. GAVSIE: Yes, they have been included in computing his income.

The CHAIRMAN: But if the vendor receives $50,000, then the purchaser has to show the accounts receivable on his records as $75,000? Is that right?

Mr. GAVSIE: The purchaser would show these as $75.000.

Hon. Mr. HUGESSEN: The rule would require that item of debts to be segregated from the sale of the other assets.

Mr. GAVSIE: Yes, there would have to be an agreegment. So then you have the first rule, which would be that the vendor could deduct the difference between the face value and the consideration. The next rule would be "an amount equal to the difference" is to be included in the purchaser's income.

Hon. Mr. CONNOLLY: Do you mind if I stop you there? In other words, the vendor will get $75,000, and that is part of his income.

The CHAIRMAN: No, the division would be $50,000. The purchaser would have $75,000. Is not that it?

Hon. Mr. ASELTINE: It would all depend when the book debts were accumulated.

Hon. Mr. HUGESSEN: Senator Connolly's last example was that there were $100,000 of book debts which he sold at $75,000. Now, how do we carry on from there?

Mr. GAVSIE: The vendor would have received $75,00. The accounts receivable were already included in computing the vendor's income, so that the $75,000 is not additional income. Now, dealing with the vendor, he can deduct the $25,000 from his income, and he brings back in his reserve for doubtful debts. Let us assume, that this is $25,000. So they balance. The deduction that he can make from income is balanced by reason of the fact he has to bring back into income his reserve for doubtful debts. He balances off. He has got no deduction and no addition.

The CHAIRMAN: And no tax in relation to this transaction. What happens to the purchaser?

Mr. GAVSIE: The purchaser has to inlude that difference, namely $25,000, in computing his income for the year. That is Rule (*b*).

Hon. Mr. HAIG: He can write off doubtful debts against some of that, too.

The CHAIRMAN: Yes.

Mr. GAVSIE: He includes in his income the $25,000 representing the difference between the face value of the debts and the amount agreed upon. Then the debts which he purchased shall, for the purposes of paragraphs (*e*) (which deals with the reserve for doubtful debts)—be deemed to have been included in computing the purchaser's income for that year or a previous year. So he would then be entitled to set up the reserve for doubtful debts in respect of the debts which he purchased.

Hon. Mr. ASELTINE: I will certainly advise my clients who are selling a business to keep down book accounts, and the purchaser not to buy.

The CHAIRMAN: Well, that is taking an easy way, is it not?

Mr. GAVSIE: Yes, but, senator, in the case—

Hon. Mr. ASELTINE: They get hooked both ways.

Mr. GAVSIE: No, they don't.

Hon. Mr. ASELTINE: Sure they do.

The CHAIRMAN: No. It works out under these rules.

Hon. Mr. HAIG: A vendor has set aside $25,000 for doubtful debts and he gets $50,000. That makes $75,000. So he is just even; he is clear.

Hon. Mr. ASELTINE: And he has to pay all income tax in the meantime.

The CHAIRMAN: No, he has paid it, and he has had it.

Hon. Mr. HAIG: The purchaser is supposed to take them in at $75,000, and he takes them in, and he sets up a reserve of $25,000 for doubtful debts.

Mr. GAVSIE: That is it. He is in exactly the same position as the vendor.

The CHAIRMAN: That is clear.

Hon. SENATORS: Clear.

Section agreed to.

The CHAIRMAN: Whether this section will work out would depend on the ability of the vendor and the purchaser to get together on this subject?

Mr. GAVSIE: Yes. There must be an agreement on this subject.

Hon. Mr. HAIG: It depends on the lawyer, too.

Hon. Mr. BURCHELL: Is that any change from the previous law?

The CHAIRMAN: Oh, yes.

Mr. GAVSIE: At the present time what would happen is that the vendor would have a capital loss and would have to bring into income the reserve for doubtful debts that he had at the beginning of the year, because he has already disposed of the debts. Therefore he would pay tax on his reserve for doubtful debts, less any of the debts that have been written off during that year by him previous to the sale, as bad debts.

The CHAIRMAN: This improves the vendor's position very considerably.

Some Hon. SENATORS: Agreed.

On section 25—

The CHAIRMAN: This is a simple amendment, is it not?

Mr. GAVSIE: It permits a corporation which elects to pay the 15 per cent tax on that part of its surplus accumulated after 1949, which is equal to the aggregate of dividends declared, to include taxable stock dividends in computing the aggregate of dividends. In other words, in matching the dividends paid out for the purpose of election you can include the taxable stock dividends in addition to the cash dividends.

Hon. Mr. CRERAR: What effect does that have?

Mr. GAVSIE: It widens it out. At the moment you can only elect to pay 15 per cent tax on undistributed income equivalent to the cash dividends you paid out since 1949. This amendment includes taxable stock dividends.

Hon. Mr. HUGESSEN: So it widens the provision?

Mr. GAVSIE: It widens the basis upon which you can elect.

On section 26—Tax on premium.

The CHAIRMAN:

The proposed amendment here reads:

> That sub-clause (2) of clause 26 be deleted and the following substituted therefor:

"(2) This section is applicable

(*a*) to any acquisition of shares on or after May 31, 1954, and

(*b*) to any redemption of shares on or after July 31, 1954, other than an acquisition or redemption

(*c*) where the shares were issued on or before February 19, 1953, and

(*d*) Where the maximum amount payable by the corporation in respect of the redemption or acquisition of the shares was fixed, by or in accordance with the law under which the corporation was incorporated, on or before February 19, 1953, and has not been increased since that day."

There have been many instances where the premiums on preferred shares have been stepped up as a result of the amendment passed last year. Where they have stepped up the premium since the amendment came in last year, they will be caught by this amendment and will be subject to 30 per cent instead of 20 per cent tax. Is that right?

Mr. GAVSIE: That is right.

Hon. Mr. HUGESSEN: I am not sure I understand the reason for stepping up the rate.

Mr. GAVSIE: Under section 105 you have to pay half of your earnings after 1949 out in dividends and you can elect to pay 15 per cent on the other half. That is the first rule. Now, it was found that in certain cases it was cheaper to increase the premium on your preferred stock and pay a straight 20 per cent on that premium rather than pay half your earnings out by way of dividends and pay the 15 per cent; so that the 20 per cent rate was too cheap a rate.

Hon. Mr. HUGESSEN: I see.

Mr. GAVSIE: So that where the premium on the redemption of the stock exceeds 10 per cent of the par value of the stock and that stock was issued after February the 19th, 1953, it would be applicable. In the reverse, it would not be applicable where the stock was issued before February, 1953, and the premium rate was fixed before that date. The 30 per cent tax rate would only be applicable to shares where the premium was in excess of 10 per cent of the par value or the stated value in the case where there is no par value. In other words, the 20 per cent rate was too cheap a rate in certain circumstances.

The CHAIRMAN: Shall section 26 as amended carry?

Some Hon. SENATORS: Agreed.

The section, as amended, was agreed to.

On section 27—

Mr. GAVSIE: This amendment deletes the words "in respect of shares in" and substitutes therefor the word "from". The reason that is done is that it was doubtful that the former words would include deemed to be dividends. The word "from" makes it clear.

The CHAIRMAN: Subsection (2) simply includes television films in the matter of the non-resident tax.

Section 27 was agreed to.

On section 28—

The CHAIRMAN: This is also a relieving section, is it not?

Mr. GAVSIE: Yes. It grants relief in the case of a non-resident owned financial company. The securities issued are deemed to be dividends.

The CHAIRMAN: Not the securities issued. You mean the redemption of securities.

Mr. GAVSIE: Yes, upon the redemption of securities issued by a non-resident company they are deemed to be dividends. The purpose of this amendment is to exclude from that block securities that were issued for cash.

The CHAIRMAN: For instance, United States dollars would come under paragraph (*b*).

Mr. GAVSIE: Yes, that is the purpose of paragraph (*b*).

The section was agreed to.

On section 29—Loan to wholly-owned subsidiary.

Mr. GAVSIE: This section relates to the tax withheld on interest paid to non-resident persons. The particular situation dealt with is where money is borrowed from a Canadian resident or a non-resident insurance company carrying on business in Canada (referred to as "the original lender" in the section) by a non-resident corporation which in turn loans it to a wholly-owned subsidiary corporation in Canada whose principal business is the making of loans. The new section provides that in such circumstances the non-resident parent corporation and the original lender may elect that the interest paid on the money by the Canadian subsidiary shall be deemed to have been paid by the Canadian subsidiary direct to the original lender, and thus free it from the withholding tax.

Hon. Mr. ASELTINE: All right.

The CHAIRMAN: Is that the effect of the whole of section 29?

Mr. GAVSIE: Subsection (2) makes the same rule applicable where the Canadian subsidiary is merely a holding company and the business of making loans is carried on by subsidiaries of the Canadian holding company.

The CHAIRMAN: Subsection (4)?

Mr. GAVSIE: That is part of it. There must be an election by the lender and the non-resident parent.

The section was agreed to.

On section 30.

Mr. GAVSIE: This authorizes the making of regulations to determine what may be regarded as support to a non-resident dependent. You have a man living in Canada who has dependents out of Canada, and it is a difficult problem to determine what is support in order for him to claim a dependent, whether a wife, child or other dependent. The purpose is to give the Governor in Council authority to make regulations setting forth the rules that would be applicable.

The section was agreed to.

On section 31—Arm's length.

The CHAIRMAN: This section deals with the reconstruction of what is arm's length and when. This amendment repeals subsection (5) of section 139, which I will read, if I may:

> (5) Arm's length. For the purposes of this Act,
> (*a*) a corporation and a person or one of several persons by whom it is directly or indirectly controlled,
> (*b*) corporations controlled directly or indirectly by the same person, or
> (*c*) persons connected by blood relationship, marriage or adoption,
> shall, without extending the meaning of the expression "to deal with each other at arm's length", be deemed not to deal with each other at arm's length.

There you have a combination of words which would be or could be susceptible to some pretty broad interpretations.

Hon. Mr. ASELTINE: I think, Mr. Chairman, you explained that a couple of years ago, did you not?

The CHAIRMAN: I was just wondering if I ever embarked on such a never-ending enterprise.

In section 31, Mr. Gavsie, you have attempted to spell out particular relationships that would constitute not dealing at arm's length?

Mr. GAVSIE: That is right.—to spell it out.

The CHAIRMAN: There is no generality left. then?

Mr. GAVSIE: That is right. Formerly, we had a rule, for instance, concerning one of several persons who controlled a corporation, which might have been interpreted, for example, that a shareholder in a very large public corporation because he had one share might be one of several persons who controlled a corporation. That is very general language and might, as I say, be interpreted one way or another, and the purpose of this amendment is to try and spell out in specific detail the cases that would be deemed to be not dealing with each other at arm's length. Senator Hayden gave you examples, and I do not think I can add very much.

Hon. Mr. KINLEY: How far does this blood relationship go?

Mr. GAVSIE: It is fairly narrow, senator. That was amended two years ago. I might read paragraph (*a*) subsection 6 of section 139 of the act, which says:

> (*a*) Persons are connected by blood relationship if one is the child or other descendant of the other or one is the brother or sister of the other.

So that you would have grandparents, father and mother, and you would have the taxpayer, you would have his brothers or sisters, or a son or daughter or grandchildren. I think that some of the English cases have held that as long as you can find relationship it is blood relationship; and the purpose of the amendment two years ago was to limit it.

The CHAIRMAN: The department proposed to set up a bureau to get certificates establishing relationships before they started in business?

Mr. GAVSIE: No; this has been narrowed considerably by this amendment.

Hon. Mr. BOUFFARD: But the relationship between two corporations seems to be more in doubt. I may be a shareholder in two corporations holding only one share and be deemed to be a member of that group?

Mr. GAVSIE: No, you would have to have the same people in both corporations. In other words, there may be three people who may be the same three people in control of each of the two corporations.

The CHAIRMAN: You are thinking of subparagraph (vi) of the Arm's Length section 31, Senator Bouffard?

Hon. Mr. BOUFFARD: Exactly.

The CHAIRMAN: Subparagraph (vi) says:

> If each member of an unrelated group that controls one of the corporations is related to at least one member of an unrelated group that controls the other corporation.

Hon. Mr. BOUFFARD: But, "if they are controlled by the same person or group of persons."

The CHAIRMAN: Yes.

Hon. Mr. BOUFFARD: Is it not a fact that a private member of two corporations may be taken as being a member of a group?

Mr. GAVSIE: If you are referring to the first item, it would be the same people in both corporations. If you were not in both corporations, then subparagraph (i), that is, the first item, would not be applicable, and you would have to come under one of the other five.

Hon. Mr. BOUFFARD: It applies to a controlled corporation; 50 per cent gives control?

Mr. GAVSIE: 50 per cent or more.

Hon. Mr. KINLEY: It only relates to controlled operations.

Mr. GAVSIE: To controlled corporations, that is right.

The CHAIRMAN: Any other questions on this arm's length section?

Hon. Mr. ASELTINE: I would take it out of the act altogether.

The CHAIRMAN: Are you making a motion to that effect?

The section was agreed to.

On section 32.

Mr. GAVSIE: This section extends for one year the provision for deduction of exploration and development expenses in respect of oil and mining, and gives effect to paragraphs 2 and 3 of the resolutions.

The section was agreed to.

On section 33.

Mr. GAVSIE: This is in respect of deep-test oil wells. This is to extend one year the testing of a significant geological structure by a deep-test well. This adds a provision that the geological conditions must be complicated. That is a modification. The term "complicated" is a technical term to geologists.

The CHAIRMAN: We have concluded our consideration, except for section (15).

Whereupon the committee adjourned.

EVIDENCE

THE SENATE

OTTAWA, Wednesday, June 16, 1954.

The Standing Committee on Banking and Commerce, to whom was referred Bill 467, an Act to amend the Income Tax Act, met this day at 11 a.m.

Hon. Mr. HAYDEN in the Chair.

The CHAIRMAN: Gentlemen, I will call the meeting to order. Last night we stood aside section 15 in order to give the Minister of Finance a chance to reflect. This morning I have talked to the Minister and to Mr. Gavsie, and the matter has been considered in the Justice Department and they are all in agreement that the objection which I took last night was sound. Therefore an amendment is being proposed now.

Hon. Mr. HAIG: Some of us thought you might be right. You can't be wrong always.

Some Hon. SENATORS: Oh, oh.

The CHAIRMAN: That is right. I always get worried when people agree with me right away. I would refer honourable senators to lines 24 and 25 on page 11 of the bill. The position I took last night was that in the form in which this legislation is drawn here a resident corporation would include a mutual as well as a stock company and you would be exempting both classes of company from any taxation on underwriting profits from 1947 to 1953 inclusive. I said surely that could not be the intention. So now the amendment proposed is as follows:

> Delete lines 24 and 25 on page 11 and substitute the following:
>
> "(3) The said section 68A (except paragraphs (*a*) and (*b*) thereof in the case of a mutual insurance corporation) is applicable in the case of a resident corporation"

What that means is that section 68A is applicable in the case of a resident corporation for these years, except that paragraphs (*a*) and (*b*) are not applicable in the case of a mutual insurance company during those years.

Hon. Mr. BURCHILL: Where does that amendment come in?

The CHAIRMAN: It replaces lines 24 and 25 on page 11 of the bill.

Hon. Mr. EULER: Mr. Chairman, I was not here for part of the discussion last evening. What change in a practical way does this make from what the act provided before? Could you give an example?

The CHAIRMAN: Yes. As drawn in the case of a resident corporation, the language included both a resident mutual company and a resident stock company. Under the section as it was drawn, both classes of companies would have been entitled to an exemption from taxation on underwriting profits from 1947 to 1953 inclusive. I suggested to the Minister last night that what they intended was to exempt mutual resident companies during that period. This is what the amendment now before us does.

Hon. Mr. EULER: Does it mean that mutual companies that paid the tax under protest, we will say, will be able to get a refund?

The CHAIRMAN: Anybody who has preserved his right in the face of the refund section.

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Hon. Mr. EULER: Does it mean that the company has to apply within a year?

The CHAIRMAN: They can raise the issue on appeal or if they apply within a year they will have a right to a refund under this section.

Hon. Mr. EULER: Does it constitute a mandamus, if I can put it that way, that if they make an application for re-assessment that the application must be granted?

Hon. Mr. HAIG: I think I can help Senator Euler on this. What has actually happened is that one of the companies paid under protest. As soon as the judgment came out the government paid the company back the money.

The CHAIRMAN: I think Senator Euler's question is a little different. He said supposing a resident mutual company today decides, in the face of this amendment, that they have some money coming to them. They must have done one of two things in order to be able to assert that position today. They must be within the time limit in the refund section.

Hon. Mr. EULER: That has not changed?

The CHAIRMAN: No. If they are not within that time limit they must have appealed.

Hon. Mr. EULER: Is it obligatory in any way to grant that appeal, or is it only with the consent of the Minister?

The CHAIRMAN: The law is in their favour so it would be a sure thing on appeal.

Mr. GAVSIE: It would have to be dealt with in accordance with the law.

Hon. Mr. ASELTINE: In view of what has happened do you not think the department would make the refund anyway?

The CHAIRMAN: I cannot say that.

Hon. Mr. ASELTINE: I have always found them reasonable.

The CHAIRMAN: Do not over-persuade Mr. Gavsie; I think he was going to make a statement.

Mr. GAVSIE: I think you should have regard to the fact that the department cannot make the refund unless there is some provision of law that is applicable. We could not take the law into our own hands. The money paid into the Consolidated Revenue Fund can only be paid out by statutory authority or by a vote of parliament to spend the money.

Hon. Mr. EULER: Or by a decision of the Supreme Court which says you collected wrongly.

Mr. GAVSIE: It would still have to come within the provisions of the law.

Hon. Mr. EULER: The Wawanesa Company paid the money under protest.

Mr. GAVSIE: I cannot discuss a particular case.

Hon. Mr. EULER: They paid under protest, am I not right in that?

Hon. Mr. HAIG: The answer is yes.

Hon. Mr. EULER: As soon as the Supreme Court judgment came out your department made the refund.

The CHAIRMAN: They must have taken an appeal as well as having paid under protest.

Hon. Mr. EULER: I do not know.

Hon. Mr. HAIG: The government could re-assess all these claims again if they wished to do so. The Minister can re-assess under section 46 of the act.

The CHAIRMAN: The Minister can re-assess at any time.

Mr. GAVSIE: I do not think he can re-assess to reduce the tax, but he can re-assess to increase the tax. The provisions relating to overpayment are dealt with in the refund section or the appeal section.

Hon. Mr. HAIG: I have a letter from the president and he says that as soon as they were informed of the 1947 enactment they made their payment under that law, and they paid it under protest.

The CHAIRMAN: They must have entered an appeal too.

Hon. Mr. HAIG: As soon as the Stanley Mutual judgment came out the government returned them their money. The president says so himself, so they must have done that.

Mr. GAVSIE: Honourable senators will appreciate that I am under an oath of secrecy and I cannot discuss an individual taxpayer's case without subjecting myself to criminal penalties. I hope you will appreciate that the reason I am silent on this is that I do not want to get into trouble myself, and I do not think I should be put in the position of saying what the facts were in the Wawanesa case. I do not know them personally at the moment. I do not think I should be asked to find them out and to disclose them.

The CHAIRMAN: I think the question is answered when you state that if you come within the precedure by way of getting—

Hon. Mr. EULER: Excuse me, but this amendment does not make any change in the procedure?

The CHAIRMAN: No, it only makes a declaration of what the law is.

Hon. Mr. BOUFFARD: How many companies would get a refund?

Mr. GAVSIE: I do not know.

Hon. Mr. BOUFFARD: Could you state generally as to what percentage would be refunded at all?

Mr. GAVSIE: It would depend when the assessments were made or payments were made.

The CHAIRMAN: It would appear, if you are just going to make a running broad jump at it, that in connection with most of the companies, if they made their returns in time, and if the department followed its usual practice for the last quite a number of years of assessing promptly, their time would be run out except possibly for 1952 and 1953.

Mr. GAVSIE: It would appear to be that.

The CHAIRMAN: Shall this section as amended carry?

The section as amended was agreed to.

The CHAIRMAN: Before I ask the next question, I just want to state my position again. I think that if the Minister were standing again as he stood in the year 1946 when he introduced this legislation to parliament and said, "We are going to implement the decision of the Royal Commission and tax mutual companies on their underwriting profits", and then he would say, "Well, now, the courts have said we have not succeeded in doing what we set out to do and now I am going to reaffirm that principle and say, this is my method now, I am reaffirming the stand I took in 1946," I would support it 100 per cent, but when we get down to 1954 and are granting concessions as between two groups of people it bothers me a bit when you draw the line between the two. The Minister's explanation was, "Well, the resident and mutual companies had been successful in the courts and you should not legislate away the benefit of that court decision." Well, I subscribe to that 100 per cent. I do not like the idea retroactively of negativing the effect on the court decision. Prospectively, that is perfectly all right. But the explanation that he then gave was that the non-resident companies enjoyed during that period from 1947 down to 1954 some advantage in relation to investment income which the resident companies did not enjoy.

Hon. MEMBERS: Hear, hear.

The CHAIRMAN: Now, under this legislation Mr. Gavsie referred to last night, over a period of years, that advantage will be taken away. Is that not right?

Mr. GAVSIE: To the extent that they have investments in Canada in excess of liabilities.

Hon. Mr. HOWARD: And stress that point. I think that is the most important thing. I know something about that. You can only catch what you can estimate by the amount of their premium income, the business they are doing in Canada, because the amount of their investment—if they do not want to have investments—will only be the deposit with the Federal government which is a bagatelle.

The CHAIRMAN: The conclusion of my statement is simply that I am not opposing this section but I would feel happier if everybody had been treated the same way. I do not think because somebody has an advantage in some other point in the problem, that that should be used to effect this legislation, which should be generally applicable to all companies carrying on the same kind of business. If they have some advantage it is within the power of the department to take it away. It is only by reason of a matter of a rule, it is not a statute and all I am doing is just stating my view on it. I would be much happier if every person was on an equal footing.

Hon. Mr. EULER: One point on the subject of the amendment that you suggested yesterday, Mr. Gavsie. I tried to make a statement to the house yesterday in connection with that. You told me that you were already applying this principle, that you were already taxing them on investment income where the income from their assets was greater than from their liabilities. You have already been applying that?

Mr. GAVSIE: Yes, by the Order-in-Council which I referred to last night, which is part 8 of the Income Tax regulations.

Hon. Mr. EULER: Last year, was it not?

Mr. GAVSIE: Yes, starting with 1953. From now on they are taxed. Then starting in 1953 a non-resident insurance company, whether or not it is a mutual, is subject to the non-resident tax on their Canadian assets in excess of their Canadian liabilities. I do not want to get into this because Senator Hayden is talking about policy, but I do want to make the explanation so that the committee will understand. The point I understand that Senator Hayden is making is that non-resident mutuals should not be subject to tax on their underwriting profits for the period up to 1954.

The CHAIRMAN: No, it is exactly the opposite I have said.

Mr. GAVSIE: Or vice versa, the resident mutual insurance company should also be subject to tax.

The CHAIRMAN: Yes. I said all mutuals should be treated the same way.

Hon. Mr. BOUFFARD: Does it not also mean that if we accept that principle, that when a case is taken before the courts every one who has the same problem should either intervene or take action at the same time to get the benefit of it?

The CHAIRMAN: I think he should. If one person carries the banner all by himself and gains a benefit, I would be opposed to negativing the effect of his judgment. If some sit back and wait as in this case, they are all going to get the benefit retroactively.

Hon. Mr. BOUFFARD: They should, but they do not.

The CHAIRMAN: Now, in the case of the Stanley Mutual, I think it might have qualified in any event through the exception that we put into the act this time—I think it would qualify as a farm mutual. If so, with the exception in the act they are not taxable.

Hon. Mr. EULER: They would come under the exception if the premiums on the business that they do with farmers and fishermen exceed 50 per cent of their total premiums.

The CHAIRMAN: Yes, if their premium income from farmers and fishermen is more than 50 per cent of their total premium income, they qualify.

Hon. Mr. BURCHILL: How many non-resident mutuals would be affected?

The CHAIRMAN: I have not any idea.

Hon. Mr. HOWARD: A lot of them.

The CHAIRMAN: Have you any idea, Mr. Gavsie?

Mr. GAVSIE: I could not give the figures.

Hon. Mr. BURCHILL: Would there be quite a lot of money involved?

Mr. GAVSIE: Yes, there is a substantial amount of money involved.

The CHAIRMAN: I think it could run into a few millions of dollars.

Mr. GAVSIE: Yes, it could go up that high.

Hon. Mr. LAMBERT: That is in revenue?

The CHAIRMAN: In taxes.

We have covered all the sections of this bill. Before I ask you if I will report the bill I would like on your behalf to thank Mr. Gavsie for the explanations that he has given to us.

Hon. Mr. EULER: I move that the bill be reported as amended.

The CHAIRMAN: I will report the bill as amended. We have no other business before us, so the meeting is adjourned.

APPENDIX "A"

REPORT OF THE COMMITTEE

WEDNESDAY, June 16, 1954.

The Standing Committee on Banking and Commerce to whom was referred the Bill 467 from the House of Commons, intituled: "An Act to amend the Income Tax Act", have in obedience to the order of reference of 15th June, 1954, examined the said Bill and now beg leave to report the same with the following amendments:—

1. *Page 1, line 4*: strike out the words "Subsection (1) of".

2. *Page 2, line 30*: after the word "amount" insert the word "actually".

3. *Page 11, lines 24 and 25*: delete lines 24 and 25 and substitute therefor the following:—

"(3) The said section 68A (except paragraphs (a) and (b) thereof in the case of a mutual insurance corporation) is applicable in the case of a resident corporation".

4. *Page 18, lines 13 to 16 both inclusive*: delete subclause (2) of clause 26 and substitute therefor the following:—

"(2) This section is applicable

(*a*) to any acquisition of shares on or after May 31, 1954, and

(*b*) to any redemption of shares on or after July 31, 1954, other than an acquisition or redemption

(*c*) where the shares were issued on or before February 19, 1953, and

(*d*) where the maximum amount payable by the corporation in respect of the redemption or acquisition of the shares was fixed, by or in accordance with the law under which the corporation was incorporated, on or before February 19, 1953, and has not been increased since that day."

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.